

REMARKS

This is in response to the Office Action of January 27, 2009. Claims 2, 6-11, and 14 are cancelled, without prejudice. Claims are amended, and new claims are added, in order to advance the prosecution of this application. Support for the amendment of claim 1 is found in original claim 2, and in the specification, page 5, lines 10-12. Support for the amendment of claim 12 is found in the specification, page 19, lines 25 to page 20, line 21. Support for the amendment of claim 13 is found in the specification, page 21, lines 14-25. Support for new claim 23 is found in the specification, page 4, lines 18-19. Support for new claim 24 is found in the specification, page 95, the table, the 5th column, showing that Examples 11, 13, 14, and 15, which comprise tetraquistrimethylsiloxysilane and methyltrimethicone, are rated high in "No straining after applied." Support for new claim 25 is found in the specification, page 20, lines 12-14. New claims 26 and 27 correspond to original claim 15. New claims 28 and 29 correspond to original claim 16. No new matter is introduced by this Amendment. Claims 1, 3-5, 12, 13, and 15-29 are now pending in the application.

Claims 1, 3-5, and 17-21 were rejected under 35 U.S.C. § 102(e) as being anticipated by US 2004/0197284 A1 (Auguste). Office Action, pages 2-3. Claim 2 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Auguste in view of EP 1 213 006 (Kuroda). Office Action, pages 3-4. Claims 6-16 and 22 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Auguste. Office Action, pages 4-6. The Auguste publication has a 35 U.S.C. § 102(e) of at least May 23, 2003 (its U.S. filing date), and possibly of April 10, 2003 (its U.S. priority date, based on SN 60/461,400). The present application is entitled to a priority date of March 19, 2003. Enclosed herewith is a translation into the English language of a certified copy of Applicants' Japanese priority document filed March 19, 2003, along with a certification of the accuracy of the translation by the translator. Therefore, the Auguste publication may not properly be used as a reference against the present application.

Claims 1-10, 12-15, and 17-22 were rejected under 35 U.S.C. § 103(a) as being unpatentable over US 2002/0114771 A1 (Nakanishi) in view of JP 11-217584 (Kobayashi). Office Action, pages 6-7. The rejection is respectfully traversed.

The Examiner contends that Nakanishi describes a cosmetic composition comprising branched silicone compounds, citing paragraph [0008]. However, in paragraph [0008], Nakanishi teaches preparing a silicone compound by introducing both polyoxyalkylene and silicone compounds to organohydrogenpolysiloxane through the used of addition reactions. Further, Nakanishi teaches that the silicone compound is employed as an emulsifier because it has a strong emulsifying capability.

In contrast, tetraquistrimethylsiloxysilane (MRQ) and methyltrimethicone (M3T), described in Kobayashi, do not have a polyoxyalkylene moiety and are not capable of emulsifying.

Therefore, a person of ordinary skill in the art would not replace the branched silicone compounds of Nakanishi with the M4Q or M3T of Kobayashi.

Nakanishi also discloses silicone-branched silicone compounds (A) in his claims 2 and 3. The one disclosed in claim 2 comprises a group $-C_xH_{2x}-$; it therefore differs significantly from M4Q and M3T. The one disclosed in claim 3 is prepared by polymerizing a branched silicon compound containing units represented by formula (4) with a linear silicone compound represented by formula (6). The branched silicone compound containing the units represented by formula (4) comprises at least three units of the formula $-[R^5SiO_{1/2}]_n-$ and accordingly contains at least 4 silicon atoms, because it also comprises at least one unit of the formula $-[R^5SiO_{3/2}]_k-$. The silicone compound represented by formula (6) comprises at least 2 silicon atoms with k being 0. Consequently, a polymerization product has at least 6 silicon atoms. M4Q, on the other hand, has 5 silicon atoms and M3T has 4 silicon atoms – they therefore differ significantly from the branched silicone compound (A) disclosed in claim 3 of Nakanishi.

Since the branched silicone compounds described in Nakanishi are entirely different from M4Q and M3T, a person of ordinary skill in the art would not use M4Q and M3T in the

cleaning compositions described in Nakanishi. Further, Nakanishi relates to emulsified cosmetics. Nakanishi does not mention oil-based cosmetics or solid makeup cosmetics. Finally, both Nakanishi and Kobayashi are silent with respect to methods of preparing M4Q.

Accordingly, Applicants respectfully submit that claims 1, 3-5, 12, 13, and 15-29 currently pending in this application are not obvious from the (improperly) combined disclosures of Nakanishi and Kobayashi. Withdrawal of the rejection is in order and is earnestly solicited.

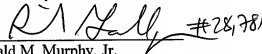
Should there be any outstanding matters that need to be resolved in the present application, the Examiner is respectfully requested to contact Richard Gallagher (Reg. No. 28,781) at the telephone number of the undersigned below, to conduct an interview in an effort to expedite prosecution in connection with the present application.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37.C.F.R. §§1.16 or 1.14; particularly, extension of time fees.

Dated: May 27, 2009

Respectfully submitted,

By

 #28,781
Gerald M. Murphy, Jr.

Registration No.: 28,977

BIRCH, STEWART, KOLASCH & BIRCH, LLP

8110 Gatehouse Rd

Suite 100 East

P.O. Box 747

Falls Church, Virginia 22040-0747

(703) 205-8000

Attorney for Applicant